

Voluntary Planning Agreement

Reference: CHA079/20

23 August 2016

Burwood Council

ABN 84 362 114 428

Burwood Holdings (NSW) Pty Ltd

ACN 600 045 716

Sydney

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Agreement

Date

Parties

First party

Name Burwood Council (**Council**)
ABN 84 362 114 428
Contact General Manager
Telephone (02) 9911 9911

Second party

Name Burwood Holdings (NSW) Pty Ltd (**Developer**)
ACN 600 045 716
Contact ~~Marwan Chanine~~ SHUXIM ZONG
Telephone ~~(02) 9267 2000~~ (02) 9266 0066

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Background

- A. On 19 April 2016, the Developer, through its consultant CD Architects, lodged a Development Application with the Council for Development Consent to carry out the Development on the Land.
- B. That Development Application was accompanied by an offer by the Developer to enter into this agreement to make contributions for public purposes if Development Consent is granted.

Operative part

1 Definitions

In this agreement, unless the context indicates a contrary intention:

Act means the *Environmental Planning and Assessment Act 1979* (NSW);

Address means a party's address set out in the Notices clause of this agreement;

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person;

Business Day means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

Construction Certificate means a construction certificate as defined under s 109C of the Act;

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Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land;

Development means alterations and additions to an approved mixed use development on the Land, including 5 additional dwellings, increased on-site car parking and minor alterations to unit layouts, as proposed in Development Application DA52/2016 lodged with the Council on 19 April 2016;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

Fax Number means a party's facsimile number set out in the Notices clause of this agreement;

GST has the same meaning as in the GST Law;

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition of or administration of the GST;

Land means the land within SP 43143, known as 6 Railway Parade, Burwood;

Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

Monetary Contribution A means the monetary contribution payable by the Developer under clause 6(a) of this agreement;

Monetary Contribution B means the monetary contribution payable by the Developer under clause 6(b) of this agreement;

Monetary Contributions means all monetary contributions payable by the Developer under this agreement;

Register means the Torrens title register maintained under the *Real Property Act 1900* (NSW); and

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;

- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO or managing director)** the president, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Australia, even if the obligation is to be performed elsewhere;
- (p) **(Joint and several)** an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;

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- (t) **(month)** a reference to a month is a reference to a calendar month; and
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 93F of the Act.
- (b) Schedule 2 of this agreement summarises the requirements for planning agreements under section 93F of the Act and the way this agreement addresses those requirements.

4 Application of this agreement

This agreement applies to:

- (a) the Development, and
- (b) the Land.

5 Operation of this agreement

This agreement commences on and from the date it is executed by all parties.

6 Contributions to be made under this agreement

6.1 Monetary Contribution

- (a) The Developer will pay to Council a monetary contribution of ~~\$300,830.00~~ ^{\$275,000}, for the purpose of open space and community facilities as identified in an urban design study undertaken by Council which revealed that in parts of Burwood Town Centre, including the area in which the subject land is located, there is some potential for a maximum increase of 10% FSR. Council also has in place a Burwood Community Facilities and Open Space Study, which identified public benefit requirements in the Burwood Local Government Area. .
- (b) The Developer will pay to Council a monetary contribution of \$137,760.00 for the purpose of car parking.
- (c) The Monetary Contributions have been calculated as set out in Schedule 1.
- (d) The Monetary Contributions must be paid to Council prior to the issue of a Construction Certificate for the Development.
- (e) The Monetary Contributions must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (f) The Monetary Contributions will be taken to have been made when the Council notifies the Developers in writing that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.

7 Application of s 94, s 94A and s 94EF of the Act to the Development

- (a) This agreement does not exclude the application of section 94 of the Act to the Development.

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- (b) This agreement does not exclude the application of section 94A of the Act to the Development.
- (c) This agreement does not exclude the application of section 93EF of the Act to the Development.
- (d) The benefits under this agreement are not to be taken into consideration in determining a development contribution under section 94 of the Act.

8 Registration of this agreement

8.1 Registration of this agreement

- (a) The Developer agrees to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 93H of the Act.
- (b) The Developer at its own expense will, promptly after the execution of this agreement, take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
 - (i) The consent of each person who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Land,
 - (ii) An acceptance of the terms of this agreement and an acknowledgement in writing from any existing mortgagee in relation to the Land that the mortgagee will adhere to the provisions of this agreement if it takes possession of the Land as mortgagee in possession,
 - (iii) The execution of any documents; and
 - (iv) The production of the relevant duplicate certificates of title,
 to enable the registration of this agreement in accordance with clause 8.1.
- (c) The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
 - (i) to procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than 10 Business Days after that date; and
 - (ii) to procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration.

8.2 Removal from Register

The Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided the Council is satisfied the Developer has duly fulfilled its obligations under this agreement, and is not otherwise in default of any of the obligations under this agreement.

9 Review of this agreement

- (a) This agreement may be reviewed or modified. Any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties.
- (b) No modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.
- (c) A party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

10 Dispute Resolution

10.1 Reference to Dispute

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

10.2 Notice of Dispute

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) The nature of the dispute,
- (b) The alleged basis of the dispute, and
- (c) The position which the party issuing the Notice of Dispute believes is correct.

10.3 Representatives of Parties to Meet

- (a) The representatives of the parties must promptly (and in any event within 10 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting,
 - (ii) agree that further material or expert determination in accordance with clause 10.6 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
 - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

10.4 Further Notice if Not Settled

If the dispute is not resolved within 10 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (Determination Notice) by mediation under clause 10.5 or by expert determination under clause 10.6.

10.5 Mediation

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within 10 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;
- (b) The mediator will be agreed between the parties, or failing agreement within 10 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The mediator appointed pursuant to this clause 10.5 must:
 - (i) Have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) Have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The parties must within 10 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation;
- (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
 - (i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

10.6 Expert determination

If the dispute is not resolved under clause 10.3 or clause 10.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) The dispute must be determined by an independent expert in the relevant field:
 - (i) Agreed upon and appointed jointly by the parties; and
 - (ii) In the event that no agreement is reached or no appointment is made within 10 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;

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- (b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
 - (i) Within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
 - (ii) The determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

10.7 Litigation

If the dispute is not *finally* resolved in accordance with this clause 10, then either party is at liberty to litigate the dispute.

10.8 No suspension of contractual obligations

Subject to any interlocutory order obtained under clause 10.1, the referral to or undertaking of a dispute resolution process under this clause 10 does not suspend the parties' obligations under this agreement.

11 Enforcement

11.1 Default

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this agreement.

11.2 Restriction on the issue of Certificates

In accordance with section 109F of the Act and clause 146A of the Regulation the obligation to pay the Monetary Contributions under this agreement must be satisfied

prior to the issue of a Construction Certificate for the Development or any part of the Development.

11.3 General Enforcement

- (a) Without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this agreement prevents:
 - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and
 - (ii) the Council from exercising any function under the Act or any other Act or Law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

12 Assignment and Dealings

12.1 Application of clause

Clause 12.2 and clause 12.3 of this agreement do not apply in relation to any sale, transfer, assignment or disposal of the Land if:

- (a) the agreement is registered against the title to the Land in accordance with clause 8, at the time of the sale, transfer, assignment or disposal; or
- (b) the Council has provided a release and discharge under clause 8.2, and

in those circumstances, the Developer must notify Council of any sale, transfer, assignment or disposal of any part of its right, title or interest in the Land or in the Development within 10 Business Days of that transfer, assignment or disposal taking effect.

12.2 Assignment

- (a) A party must not assign or deal with any right under this agreement without the prior written consent of the other parties.
- (b) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a party (excluding the Council) shall be deemed to be an assignment of this agreement for the purposes of this clause.
- (c) Any purported Dealing in breach of this clause is of no effect.

12.3 Transfer of Land

- (a) The Developer may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:
 - (i) The Developer satisfies the Council that the proposed Transferee is financially capable of complying with the Developer obligations under this agreement;
 - (ii) The Developer satisfies the Council that the rights of the Council will not be diminished or fettered in any way;

- (iii) The Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developer under this agreement;
- (iv) Any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and
- (v) The Developer and the Transferee pay the Council's reasonable costs in relation to the assignment.

13 Approvals and consents

Except as otherwise set out in this agreement, and subject to any statutory obligations, a party may give or withhold an Approval or consent to be given under this agreement in that party's absolute discretion and subject to any conditions determined by the party. A party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14 No fetter

14.1 Discretion

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Development Application or any other application for Development Consent (all referred to in this agreement as a "Discretion").

14.2 No fetter

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

- (a) They will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
- (b) In the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and
- (c) To endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

15 Notices

15.1 Notices

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email or fax at the address or fax number below, or at the

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address or fax number last notified by the intended recipient to the sender after the date of this agreement:

- (i) to Burwood Council: PO Box 240, Burwood NSW 1805
 Fax: (02) 9911 9900
 Email: council@burwood.nsw.gov.au
 Attention: General Manager
 - (ii) to Burwood Holdings (NSW) Pty Ltd: ~~c/- Chanine Developments, PO Box A102, Sydney South NSW 1235~~
 Fax: ~~mc@c9d.sydney~~
 Email: ~~mc@c9d.sydney~~
 Attention: ~~Marwan Chanine~~
- Handwritten notes:*
 Luxeland Group, PO Box Q1765, Queen Victoria Building NSW 2000
 tony@luxelandgroup.com.au
 SHUXIM ZONG
 DANDAN REN

- (c) is taken to be given or made:
 - (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of a fax, on production of a transmission report by the machine from which the fax was sent that indicates the fax was sent in its entirety to the recipient's fax number; and
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

15.2 Notices sent by email:

- (a) A party may serve a Notice by email if the Notice:
 - (i) includes a signature block specifying:
 - (A) the name of the person sending the Notice; and
 - (B) the sender's position within the relevant party;
 - (ii) states in the body of the message or the subject field that it is sent as a Notice under this agreement;
 - (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this agreement;
 - (iv) is sent to the email address below or the email address last notified by the intended recipient to the sender:

- (A) to Burwood Council: Attention: General Manager
 council@burwood.nsw.gov.au
 - (B) to Burwood Holdings (NSW) Pty Ltd: Attention: ~~Marwan Chanine~~
~~mc@c9d.sydney~~
- Handwritten notes:*
 SHUXIM ZONG
 DANDAN REN
 tony@luxelandgroup.com.au

- (b) The recipient of a Notice served under this clause 15.2 must:
 - (i) promptly acknowledge receipt of the Notice; and
 - (ii) keep an electronic copy of the Notice,
- (c) Failure to comply with clause 15.2 does not invalidate service of a Notice under this clause.

15.3 Receipt of Notices sent by email

- (a) A Notice sent under clause 15.2 is taken to be given or made:
 - (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above; or
 - (ii) when the Notice enters an information system controlled by the recipient; or
 - (iii) when the Notice is first opened or read by the recipient,whichever occurs first.
- (b) If under clause 15.3 a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

16 General

16.1 Relationship between parties

- (a) Nothing in this agreement:
 - (i) constitutes a partnership between the parties; or
 - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
 - (i) bind another party; or
 - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

16.2 Time for doing acts

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

16.3 Further assurances

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

16.4 Variation

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

16.5 No Assignment

A party cannot assign or otherwise transfer rights under this agreement without the prior written consent of the other party, with the exception of any assignment or dealing in accordance with clause 12 of this agreement.

16.6 Counterparts

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

16.7 Legal expenses and stamp duty

The Developer must pay the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution, carrying into effect and release and discharge of this agreement.

16.8 Entire agreement

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

16.9 Representations and warranties

The parties represent and warrant that they have the power and authority to enter into this agreement and comply with their obligations under the agreement and that entry into this agreement will not result in the breach of any Law.

16.10 Severability

If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

16.11 Invalidity

- (a) A word or provision must be read down if:
 - (i) this agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this agreement will not be void, voidable or unenforceable if it is read down;
and
 - (iii) the provision is capable of being read down.

- (b) A word or provision must be severed if:
 - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 16.11(b) applies.

16.12 Waiver

- (a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- (b) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

16.13 GST

- (a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this agreement, the recipient of the supply must pay the GST or an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

16.14 Governing law and jurisdiction

- (a) The Laws applicable in New South Wales govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

Schedule 1 Calculation of Monetary Contributions

Monetary Contribution A

- (a) Monetary Contribution A is calculated at \$1,100 per square metre of "additional floor space" which is a reasonable rate per square metre. ✓
- (b) The site area is 858.6 square metres. ✓
- (c) The FSR requirement for the site is 4.5:1, resulting in a total allowable floor space of 3,863.7 square metres. ✓
- (d) The proposed gross floor area is 4,219 square metres.
- (e) The proposed gross floor area is 355.3 square metres above the allowable floor space based on the maximum FSR requirement (4,219 – 3,863.7). *in*
- (f) ~~The "additional floor space" is 355.3 square metres.~~ *The approved additional floor space is 250m²*
- (g) The total of Monetary Contribution A is therefore $\$1,100 \times 355.3 = \$390,830.00$
250 = \$275,000

Monetary Contribution B

Visitor Parking

- (a) The *Burwood Development Control Plan*, adopted on 12 February 2013 (amended 10 March 2015), provides that the following formula will apply for calculating monetary contributions in lieu of visitor car parking:
(Number of spaces not being provided on site x cost of an on-site parking space) x 0.8
Note that the calculation must be undertaken on the basis of the number of car spaces required to 1 decimal point without rounding to a whole number.
- (b) On the calculations, 9.4 visitor car spaces are required.
- (c) 8 visitor car spaces will be provided.
- (d) The number of visitor car spaces not provided on site is therefore 1.4.
- (e) A reasonable rate per parking space is \$48,000.00.
- (f) The monetary contribution payable for visitor parking is therefore $(1.4 \times \$48,000) \times 0.8 = \$53,760.00$.

Residential & Commercial Car Parking

- (a) The *Burwood Development Control Plan*, adopted on 12 February 2013 (amended 10 March 2015), provides that the following formula will apply for calculating monetary contributions in lieu of on-site car parking:
Number of spaces not being provided on site x cost of an on-site parking space
Note that the calculation must be undertaken on the basis of the number of car spaces required to 1 decimal point without rounding to a whole number.
- (b) On the calculations, 48.75 car spaces are required for residential and commercial development.
- (c) 47 car spaces will be provided.

- (d) The number of car spaces for commercial and residential development not provided on site is therefore 1.75.
- (e) A reasonable rate per parking space is \$48,000.00.
- (f) The monetary contribution payable for residential and commercial car parking is therefore $(1.75 \times \$48,000) = \$84,000.00$.

Total Monetary Contribution B

- (g) The total of Monetary Contribution B is therefore $\$53,760.00 + \$84,000 = \$137,760.00$

Schedule 2 Summary of requirements (section 93F)

Subject and subsection of the Act	Planning Agreement
Planning Instrument and/or Development Application – Section 93F(1) The Developer has: <ul style="list-style-type: none"> (a) Sought a change to an environmental planning instrument <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (b) Made, or propose to make a Development Application <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 	
Description of the land to which the planning Agreement applies – Section 93F(3)(a)	The definition of "Land" in clause 1 is SP43143, known as 6 Railway Parade, Burwood.
The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 93F(3)(b)	Clause 6 requires the payment of monetary contributions in a specified amount, prior to the issue of a Construction Certificate for the Development.
Applicability of section 94 of the Act – Section 93F(3)(d)	Section 94 is not excluded, see Clause 7(a).
Applicability of section 94A of the Act – Section 93F(3)(d)	Section 94A is not excluded, see Clause 7(b).
Applicability of section 94EF of the Act – Section 93F(3)(d)	Section 94EF is not excluded, see Clause 7(c).
Mechanism for dispute resolution – Section 93F(3)(f)	Mechanisms for dispute resolution including mediation and expert determination are available, see Clause 10.
Enforcement of the Planning Agreement – Section 93F(3)(g)	The planning agreement can be enforced in accordance with Clause 11.
Registration of the Planning Agreement – Section 93F(3)(g)	The planning agreement must be registered in accordance with Clause 8.
No obligation to grant consent or exercise functions – Section 93F(9)	There is no fetter on the Council's discretion, see clause 14.

Signature of Witness

Signature of Attorney Michael Gerard McMahon

By executing this document, the attorney certifies that he has not received notification of revocation of the power of attorney.

Print name of Witness

Executed by Burwood Holdings (NSW)
Pty Ltd ACN 600 045 716 in accordance
with section 127 of the *Corporations Act*
2001 (Cth) by:

)
)
)
)
)



Signature of Director



Signature of Director/Secretary

Dandan REN

Print name of Director

Shuxin Zou

Print name of Director/Secretary



Annexure A Draft Explanatory note

Explanatory Note
Exhibition of draft Voluntary Planning Agreement
SP43143, known as 6 Railway Parade, Burwood

Environmental Planning & Assessment Regulation 2000 (clause 25E)

Planning Agreement

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft voluntary Planning Agreement (**the Planning Agreement**) under Section 93F of the *Environmental Planning and Assessment Act 1979 (the Act)*.

The Planning Agreement will require the provision of monetary contributions in relation to proposed development of land in SP43143, known as 6 Railway Parade, Burwood.

This Explanatory Note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000 (the Regulations)*.

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

Parties

Burwood Holdings (NSW) Pty Ltd (**the Developer**) made an offer to Burwood Council (**the Council**) to enter into a voluntary Planning Agreement, in connection with a Development Application relating to the subject land.

Description of subject land

The land to which the Planning Agreement applies is described as SP43143, known as 6 Railway Parade, Burwood (**the Land**).

Description of the Development Application to which the Planning Agreement applies

The Development Application proposes alterations and additions to the development the subject of Development Consent DA195/2014, granted by the Council with a deferred commencement consent on 31 March 2016. The additions and alterations include 5 additional apartments, increased on-site car parking and minor alterations to approved unit layouts.

Summary of Objectives, Nature and Effect of the Planning Agreement

Monetary Contribution

The Planning Agreement requires a monetary contributions in the following amounts:

- (a) ~~\$3390,830.00~~ ^{\$275,000} for the purpose of open space and community facilities as identified in an urban design study undertaken by Council which revealed that in parts of Burwood Town Centre, including the area in which the subject land is located, there is some potential for a maximum increase of 10% FSR. Council also prepared a Burwood Community Facilities and Open Space Study, which identified public benefit requirements in the Burwood Local Government Area..
- (b) **\$137,760.00** for the purpose of car parking.

Assessment of the Merits of the Planning Agreement

How the Planning Agreement Promotes the Objects of the Act and the public interest

The draft Planning Agreement will require contributions towards the provision of public open space, community facilities and car parking. These contributions promote the following objectives of the Act:

(a) to encourage

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,
- (iii) ...
- (iv) the provision of land for public purposes,
- (v) the provision and co-ordination of community services and facilities ...

The draft Planning Agreement promotes the public interest by contributing towards the provision of public spaces and community facilities. The monetary contributions towards car parking will enable the orderly and economic use of the Land.

The Planning Purposes served by the Planning Agreement

The monetary contributions are proposed in accordance with an urban design study undertaken by Council which revealed that in parts of Burwood Town Centre, including the area in which the subject land is located, there is some potential for a maximum increase of 10% FSR. Council also has in place a Burwood Community Facilities and Open Space Study, which identified public benefit requirements in the Burwood Local Government Area. In accordance with these planning documents, the contributions will promote the orderly and economic use and development of the Land. The contributions will be used to help the Council provide public open space and community facilities as well as additional car parking.

How the Planning Agreement promotes the objectives of the *Local Government Act 1993* and the elements of the Council's Charter

The Planning Agreement is consistent with the following purposes of the *Local Government Act 1993*:

- to give councils the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and the wider public;
- to give councils a role in the management, improvement and development of the resources of their areas.

The Planning Agreement promotes the following element of the Council's Charter:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively.

This element of the Council's Charter is promoted through the requirement to provide contributions that will be used by the Council to provide public open space and community facilities.

Whether the Planning Agreement Conforms with the Council's Capital Works Program

Council has in place a capital works program, but the program does not, to date, identify land acquisition and construction of public facilities within the Burwood Town Centre. The capital works program is subject to annual review and any proposal for additional public facilities would be initiated where sufficient funds are available.

Whether the Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The requirement to pay the monetary contributions must be complied with prior to the issue of a Construction Certificate for the Development.